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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|---------------------------|---------------------|------------------|
| 10/799,820 | 03/12/2004 | Marc Joseph Thomas Lebert | 4316-043718 | 8364 |

7590 06/06/2006

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Pittsburgh, PA 15219-1818

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| EXAMINER |
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MATHEW, FENN C

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| ART UNIT | PAPER NUMBER |
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3764

DATE MAILED: 06/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/799,820

Applicant(s)

THOMAS LEBERT, MARC
JOSEPH

Examiner

Fenn C. Mathew

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.


Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


JEROME DONNELLY
PRIMARY EXAMINER

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 06/14/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action based on the pre-appeal review is persuasive and, therefore, the finality of that action is withdrawn.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-5, 7-10, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Buonaiuto (U.S. 5,496,236). Referring to claim 1, Buonaiuto teaches in figure 2, an elongate upright weight bearing portion, capable of supporting the weight of a user during exercise, further comprising a transverse section (34) and two upstanding sections (30), the transverse section comprising a portion capable of being gripped extending across a top of the device, the weight bearing portion having an open bottom and generally lying in a first plane, a pair of ground-engaging feet (20) each positioned on one of the two upstanding sections (30), the feet extending outwardly from the plane to stabilize the upright weight-bearing portion without interfering with the open bottom portion, the feet being spaced apart to permit the positioning of a user between the feet so as to be clear of interference from the feet, the feet and weight and weight-bearing portion being configured so that the mass of the device is generally balanced about the first plane, the transverse section being substantially rigid (in col. 3, lines 15-16, Buonaiuto teaches use of steel). The device is capable of being used for exercises that

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would not lead to a perceptible yielding of the sections. Referring to claim 2, Buonauto teaches the fee comprising elongate elements oriented perpendicular to the plane (fig. 2). Referring to claim 3, Buonauto discloses that the height of the gripping means can be fixed using the pin, and further that the distance between the feet are fixed.

Referring to claim 4, Buonauto teaches the use of hollow tubing, and further teaches in col. 3, lines 15-16, the use of steel. Referring to claim 5, Buonauto teaches the feet comprising metal tubing sections fixed to the weight bearing portion. Referring to claim 7, Buonauto teaches the gripping portion is substantially round in cross-section.

Referring to claim 8, Buonauto teaches an anti-slide device associated with each foot and positioned to inhibit the sliding of the device when the device is in use in a standing position. Referring to claim 9, Buonauto teaches each foot comprising an elongate element (23) having two ends, and wherein the device comprises an anti-slide element positioned at each end of the foot, the anti-slide elements comprising rubber caps positioned over the ends of the feet. Referring to claim 10, Buonauto discloses the weight-bearing portion comprising first and second generally upstanding sections extending from the first and second feet, and generally horizontal transverse section comprising the gripping portion and extending between the first and second generally upstanding sections. Referring to claim 15, absent further limitation, and as best understood by the Examiner, Buonauto teaches a device wherein the feet and weight bearing portion are sized, shaped and positioned to permit the device to be stored in a nested configuration with one or more devices.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 6, 11-14, and 16-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buonavito alone. With respect to claims 6, and 11-14, Buonavito teaches the claimed inventions except for specific sizing parameters. The specific parameters are considered a matter of obvious design choice absent criticality or unexpected results, as the skilled artisan would choose parameters based on the suitability for the user. Furthermore, note that although Buonavito is silent with regard to specific heights and widths, the prior art reference cites that specific size parameters should be selected in order to accommodate a large array of user heights and body types.

6. Referring to claim 16, Buonavito teaches the claimed invention as recited in the discussion of claim 1 above except for a second exercise device. It would have been obvious to one of ordinary skill in the art to provide a second exercise device since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. It would have been obvious to place a second exerciser in a room in order to allow multiple people to utilize the device. Furthermore, the devices would be independently positionable relative one another, and as best understood based on the structure, capable of allowing users to perform exercises in which the user grips with one hand each of the gripping portions simultaneously, each device having feet configured to independently stabilize each weight-bearing portion during exercise.

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Referring to claims 17-28, the claims are substantially similar in scope to dependant claims 2-5, 7-8, and 10-15 as discussed above. Please note the above rejections.

Response to Arguments

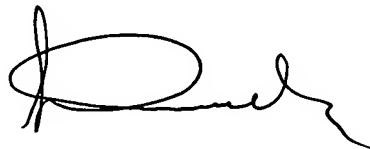
7. Applicant's arguments with respect to claims 1-28 have been considered but are moot in view of the new ground(s) of rejection. Applicant is reminded that the functional recitations associated with an apparatus claims, or statements of intended use are not germane to the patentability of a device, so long as the prior art is capable of performing the recited functions.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C. Mathew whose telephone number is (571) 272-4978. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

JEROME DONNELLY
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'J. Donnelly', with a large loop at the end.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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fcm

May 28, 2006